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REMARKS

Claims 1-29 were pending in this application prior to this amendment.

Claims 1-29 were rejected.

Claims 1, 3, 7, 15, 24, and 28, (i.e. all of the independent claims) have been amended.

Claims 1-29, as amended, are now in this application.

Applicant thanks the examiner for the telephone interview on January 30, 2006. Only procedure was discussed during this interview. The examiner indicated that it would be best to discuss substance only after an amendment containing the proposed changes had been submitted.

Abstract Objections

The Abstract was objected to because it contained the word "invention". Applicant has amended the Abstract to eliminate the problem noted by the Examiner.

Claim Rejections – 35 USC 103:

Claims 1-4, 7-25 and 28-29 were rejected under 35 USC § 103(a) as being unpatentable over Shaffer et al. (US 6,411,601) in view of Bauer (US006711129B1).

Claims 5, 6, 26 and 27 were rejected under 35 USC § 103(a) as being unpatentable over Shaffer in view of Bauer, as described above in claims 3 and 24, and further in view of Grewal (US 5,592,672).

As noted in the applicant's specification (page 1 line 10), a packet telephony gateway includes a number of resources such as trunk interfaces, Digital Signal Processors (DSPs), and one or more CPUs.

The call refusal mechanism claimed by the applicant refuses to accept calls if the CPU utilization is above a certain threshold. In refusing to accept a call, the applicant's technique only takes into account the CPU utilization. It does not

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consider the utilization of other resources in the system. The reason for this is that applicant realized that packets may be dropped if the CPU utilization is above a certain threshold even if other resources are available. Thus, with the applicant's invention, certain resources needed to handle a call may be available, and yet the call will not be accepted if the CPU utilization is above a certain threshold.

All of applicant's independent claims have been amended to make clear that the CPU utilization value is a value that is independent of the utilization of the other resources in the gateway.

The Shaffer reference, cited by the examiner, deals with examining the system resources required by a call. If the resource requirements of a call exceed the available resources, resource requests are queued. As stated in the reference:

> "If the resource requirements exceed the resource availability at the time when the call request is received, a resource reservation mechanism places the call request into network resource queues for those network resources which are in short supply. When the call request reaches the front of one of the network resource queues, the resource reservation mechanism reserves the network resource for a predetermined time interval and determines whether all resource requirements for the call request can be satisfied". (Patent 6,411,601 abstract).

There is no teaching in the Shaffer reference that a call should be refused if the CPU utilization is above a certain threshold. In fact, at column 2 line 10, the Shaffer reference specifically states that the monitor examines the availability level of "at least two network resources".

The applicant's claims have been amended to even more specifically make clear that calls are accepted or rejected based upon the CPU utilization value. The utilization of all of the various other resources in the gateway are not considered in this determination of a CPU utilization value.

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Likewise, the Bauer reference does not make decisions based upon CPU utilization. In Bauer, a measure of "available system resources" is computed "by summing the resource utilization of each active task". The Bauer reference does not teach the desirability of making decisions to reject a call based solely on the fact that the CPU utilization value is above a certain value.
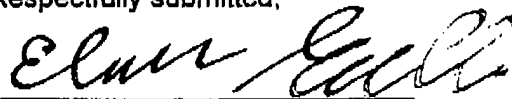
In summary, the references do not teach that if CPU utilization is above a certain threshold, calls should be refused even if resources are available to handle the call. The reason for this, as explained applicant's specification, is that if the CPU utilization is above a certain threshold, packets may be dropped.

CONCLUSION: For the foregoing reasons, reconsideration and allowance of claims 1-29 of the application as amended is respectfully requested.

If the claims are not allowed applicant respectfully requests entry of this amendment for the purpose of appeal.

The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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